FILED

(2)

No. 97 620

OCT - 6 1997

OFFICE OF THE CLERK

In the Supreme Court of the United States

October Term, 1997

SPENCER ESTATES, et al.,

Petitioners,

v.

JAMES A. HENNEFER, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME I OF II

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***Counsel of Record**

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APPENDIX A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/08/96			DEPT. A
HONORABLE: THOMAS FOYE	JUDGE	J S GIVENS	DEPUTY CLERK
HONORABLE:	JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR	
01 NONE	DEPUTY SHERIFF	LEE ST JAMES ERM	REPORTER

1:00 pm	SWC113245	Plaintiff	ANDREW WHITE (X)
	JAMES A. HENNEFER	Counsel	MELVIN AVANZADO (X)
	VS		
	DAN E. BUTCHER, ET AL.	Defendant	MOLLY MURPHY (X)
	TRANS DV.4 JUDGE FOYE ON 10-3-9	Counsel	BARTLEY BECKER (X)
			ROBERT SCHACHTER (X)

NATURE OF PROCEEDINGS:

DEFT (HERBERT SCHULZE) MOTION FOR NEW TRIAL AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

DEFTS (DAN BUTCHER, MARY BUTCHER AND CARL W. ROBERTSON, II) MOTION FOR NEW TRIAL AND MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

DEFTS (DAN E. BUTCHER, MARY F. BUTCHER AND CARL W. ROBERTSON, II) MOTION FOR ORDER STAYNG ENFORCEMENT OF JUDGMENT

MINUTES ENTERED
02/08/96
COUNTY CLERK

Page 1 of ___ DEPT. A

APPENDIX A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/08/96			DEPT. A
HONORABLE: THOMAS FOYE	JUDGE	J S GIVENS	DEPUTY CLERK
HONORABLE: 01	JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR	
NONE	DEPUTY SHERIFF	LEE ST JAMES ERM	REPORTER

1:00 pm	SWC113245 JAMES A. HENNEFER VS DAN E. BUTCHER, ET AL. TRANS DV.4 JUDGE FOYE ON 10-3-9	Plaintiff Counsel	ANDREW WHITE (X) MELVIN AVANZADO (X)
		Defendant Counsel	MOLLY MURPHY (X) BARTLEY BECKER (X) ROBERT SCHACHTER (X)

NATURE OF PROCEEDINGS:

DEFTS (DAN E. BUTCHER, MARY F. BUTCHER AND CARL W. ROBERTSON, II) MOTION TO TAX COSTS

DEFTS (DAN E. BUTCHER, MARY F. BUTCHER AND CARL W. ROBERTSON, II) MOTION FOR SANCTIONS AGAINST PLAINTIFFS AND THEIR ATTORNEYS

PLAINTIFFS' MOTION RENEWING PRIOR MOTION FOR CONTEMPT SANCTIONS AGAINST BARTLEY L. BECKER

PLAINTIFFS' MOTION FOR ORDER AMENDING JUDGMENT TO INCLUDE ALL ENTITIES OWNED OR CONTROLLED BY DEFENDANT DAN E. BUTCHER AS HIS ALTER EGO
MATTERS ARE ARGUED AND THE COURT RULES AS FOLLOWS:

MINUTES ENTERED
02/08/96
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/08/96			DEPT. A
HONORABLE: THOMAS FOYE	JUDGE	J S GIVENS	DEPUTY CLERK
HONORABLE: 01	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	DEPUTY SHERIFF	LEE ST JAMES ERM	REPORTER

1:00 pm	SWC113245 JAMES A. HENNEFER VS DAN E. BUTCHER, ET AL. TRANS DV.4 JUDGE FOYE ON 10-3-9	Plaintiff Counsel	ANDREW WHITE (X) MELVIN AVANZADO (X)
		Defendant Counsel	MOLLY MURPHY (X) BARTLEY BECKER (X)
			ROBERT SCHACHTER (X)

NATURE OF PROCEEDINGS:

1. MOTION FOR NEW TRIAL DENIED AS TO ALL PARTIES.
2. MOTION TO REDUCED PUNITIVE DAMAGES DENIED.
3. MOTION FOR STAY OF JUDGMENT DENIED.
4. MOTION TO TAX COSTS DENIED. COSTS ARE GRANTED AS PRAYED IN THE SUM OF $55,129.42.
5. SET-OFF OF PRIOR PAID ATTORNEY'S FEES GRANTED IN THE SUM OF $71,128.50.
6. MOTION TO AMEND JUDGMENT TO REFLECT ALTER EGO ENTITIES IS GRANTED.
7. MOTION FOR SANCTIONS BY DEFENDANT AND FOR A FINDING OF CONTEMPT BY PLAINTIFF ARE DENIED.

COUNSEL FOR PLAINTIFF TO PREPARE AN AMENDED JUDGMENT AND ORDER, AND GIVE NOTICE OF THIS ORDER.

MINUTES ENTERED
02/08/96
COUNTY CLERK

APPENDIX A

APPENDIX B

COURT OF APPEAL - SECOND DIST
F I L E D
MAY 22 1997
JOSEPH A. LANE Clerk
VICTOR I. SALAS Deputy Clerk

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

JAMES A. HENNEFER et al.,	B100352
Plaintiffs and Respondents,	(L.A.S.C. No. SWC113245)
v.	(THOMAS FOYE, Judge)
DAN E. BUTCHER et al.	
Defendants and Appellants	ORDER

THE COURT*:

The petition for writ of supersedeas/immediate stay, filed May 14, 1997; and the opposition thereto, filed May 19, 1997, have been read and considered.

The petition is denied.

*SPENCER, P.J. VOGEL (Miriam A.), J. MASTERSON, J.

APPENDIX B

APPENDIX C

SUPREME COURT
FILED
JUL - 9 1997
Robert Wendruff Clerk
DEPUTY

Second Appellate District,
Division One, No. B100352
S061828

IN THE SUPREME COURT OF CALIFORNIA

JAMES A. HENNEFER Et Al., Respondents

v.

DAN E. BUTCHER Et Al., Appellants

Application for stay and petition for review DENIED.

Chief Justice

APPENDIX C

APPENDIX D

FILED
LOS ANGELES SUPERIOR COURT
APR 11 1996
JOHN A. CLARKE, CLERK
BY C.L. FIELDS, DEPUTY

SUPERIOR COURT OF THE STATE CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAMES A. HENNEFER, REESE L. MILNER, II, and MILNER INVESTMENT CORPORATION, a California corporation,	)	CASE NO. SWC 113 245
Plaintiffs, v.	)	CORRECTED AMENDED JUDGMENT FOR COMPENSATORY DAMAGES
DAN E. BUTCHER, MARY F. BUTCHER, CARL W. ROBERTSON, II, AND HERBERT C. SCHULZE,	)	
Defendants.	)	

This action came on regularly for trial on October 17, 1995, in the Los Angeles County Superior Court,

APPENDIX D

Southwest District, Division 4, the Honorable Thomas P. Foye, Judge of the Municipal Court, Retired, presiding by designation. Plaintiffs James A. Hennefer, Reese L. Milner, II and Milner Investment Corporation appeared by their attorneys, Andrew M. White and Melvin N.A. Avanzado of Christensen, White, Miller, Fink, Jacobs, Glasser & Shapiro. Defendants Dan E. Butcher, Mary F. Butcher and Carl W. Robertson, II (erroneously sued and named in this action as Carl W. Robertson, III) appeared by their attorney, Robert Schachter of Hitchcock, Bowman & Schachter. Defendant Herbert C. Schulze appeared by his attorneys, Bartley L. Becker and Molly S. Murphy of Lewis, D'Amato, Brisbois & Bisgaard.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court with its verdict consisting of the special issues submitted to the jury and the answers given thereto by the jury, which said verdict-was in words and figures as follows:

Verdict Form No. 1

Do you find any of the defendants Dan E. Butcher, Mary F. Butcher or Herbert C. Schulze liable for malicious prosecution? **YES**

If your answer to the above question is yes, state which of the following defendants you have found liable for malicious prosecution by indicating "yes" (for a finding of liability) or "no" (for a finding of no liability).

Defendant Dan E. Butcher **YES**

Defendant Mary F. Butcher **YES**

Verdict Form No. 2

Do you find any of the defendants, Dan E. Butcher or Mary F. Butcher liable for abuse of process? **YES**

If your answer to the above question is yes, state which of the following defendants you have found liable for abuse of process by indicating "yes" (for a finding of liability) or "no" (for a finding of no liability).

Defendant Dan E. Butcher **YES**
Defendant Mary E. Butcher **YES**

Verdict Form No. 3

Do you find any of the defendants, Dan E. Butcher, Mary F. Butcher or Carl W. Robertson, II, liable for intentional interference with prospective economic advantage? **YES**

If your answer to the above question is yes, state which of the following defendants you have found liable for intentional interference with prospective economic advantage by indicating "yes" (for a finding of liability) or "no" (for a finding of no liability).

Defendant Dan E. Butcher **YES**
Defendant Mary E. Butcher **YES**
Defendant Carl W. Robertson, II **YES**

Verdict Form No. 4

Do you find any of the defendants, Dan E. Butcher, Mary F. Butcher or Carl W. Robertson, II, liable for negligent interference with prospective economic advantage? **YES**

BEST AVAILA

If your answer to the above question is yes, state which of the following defendants you have found liable for negligent interference with prospective economic advantage by indicating "yes" (for a finding of liability) or "no" (for a finding of no liability).

Defendant Dan E. Butcher	**YES**
Defendant Mary E. Butcher	**YES**
Defendant Carl W. Robertson, II	**YES**

Verdict Form No. 5

Do you find any of the defendants, Dan E. Butcher, Mary F. Butcher or Carl W. Robertson, II, liable for conspiracy to commit malicious prosecution, abuse of process or interference with prospective economic advantage? **YES**

If your answer to the above question is yes, state which of the following defendants you have found liable for conspiracy by indicating "yes" (for a finding of liability) or "no" (for a finding of no liability).

Defendant Dan E. Butcher	**YES**
Defendant Mary E. Butcher	**YES**
Defendant Carl W. Robertson, II	**YES**

Verdict Form No. 6

If you have found any of the following defendants liable in the foregoing questions, do you further find that the act or omission upon which you base your findings of liability of such defendant caused plaintiffs to suffer any harm or loss? Indicate for each defendant "yes" (for a finding that such defendant caused such harm or loss) or "no" (for a finding that such defendant did not cause such harm or loss)

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Defendant Dan E. Butcher	**YES**
Defendant Mary E. Butcher	**YES**
Defendant Carl W. Robertson, II	**YES**
Defendant Herbert C. Schulze	**YES**

Verdict Form No. 7A

If you answered "yes" to the question in Verdict Form No. 6 for more than one defendant, do you find that the harm or loss to plaintiffs caused by those defendants are the same? **YES**

Verdict Form No. 7B

Indicate the total amount of damages you are awarding to plaintiffs to reasonably compensate plaintiffs for harm or loss caused by all defendants. **18,611,200.00**

It appearing by the foregoing special verdicts that Plaintiffs James A. Hennefer, Reese L. Milner, II and Milner Investment Corporation are entitled to judgment against Defendants Dan E. Butcher, Mary F. Butcher, Carl W. Robertson, II and Herbert C. Schulze in the amount stated by the jury, with an offset credit applied to take into account the prior confidential settlement with Harry D. Miller and Miller, Starr & Regalia in this action for the award of compensatory economic damages for which all such defendants would have been jointly and severally liable pursuant to the order of the Superior Court dated October 16, 1995, and upon the Court's rulings upon post-trial motions of the parties.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

That Plaintiffs James A. Hennefer, Reese L. Milner, II and Milner Investment Corporation have judgment, jointly and severally, against Defendants Dan

Herbert C. Schulze in the amount of sixteen million eight hundred eleven thousand two hundred dollars ($16,811,200.00) plus costs in the amount of fifty-five thousand one hundred twenty-nine dollars and forty-two cents ($55,129.42) for a total judgment for compensatory damages in the amount of sixteen million eight hundred sixty-six thousand three hundred twenty-nine dollars and forty-two cents ($16,866,329.42).

The foregoing judgment is hereby further reduced by the amount of attorneys' fees and costs paid by Defendants in the underlying actions, which amount totals seventy-one thousand two hundred forty-one dollars and ninety cents ($71,241.90). Thus, final judgment for compensatory damages in favor of Plaintiffs James A. Hennefer, Reese L. Milner, II and Milner Investment Corporation is hereby entered, jointly and severally, against Defendants Dan E. Butcher, Mary F. Butcher, Carl W. Robertson, II and Herbert C. Schulze in the amount of sixteen million seven hundred ninety-five thousand eighty-seven dollars and fifty-two cents ($16,795,087.52).

The foregoing judgment for compensatory damages against Defendant Dan E. Butcher, in the amount of sixteen million seven hundred ninety-five thousand eighty-seven dollars and fifty-two cents ($16,795,087.52) for compensatory damages is hereby entered against all alter egos of Defendant Dan E. Butcher, which the Court has found includes the following entities which are hereby named as parties to this amended judgment for compensatory damages: Spencer Estates; QCC One', A California Limited Partnership; QCC Two, A California Limited Partnership; D & M One Limited Partnership; D & M Seven Limited Partnership; D & M Eight Limited Partnership; D & M Nine Limited Partnership; Marloma Construction

Construction; Norco Gardens; Norco Knolls and Starlight Supply Company.

APR 11 1986

Thomas P. Foye

The Honorable Thomas P. Foye
Judge of the Municipal Court (Retired),
sitting by designation

APPENDIX D

APPENDIX E

FILED
LOS ANGELES SUPERIOR COURT
APR 11 1996
JOHN A. CLARKE, CLERK
BY C.L. FIELDS, DEPUTY

SUPERIOR COURT OF THE STATE CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES A. HENNEFER, REESE L. MILNER, II, and MILNER INVESTMENT CORPORATION, a California corporation, Plaintiffs, v. DAN E. BUTCHER, MARY F. BUTCHER, CARL W. ROBERTSON, II, AND HERBERT C. SCHULZE, Defendants.	)	CASE NO. SWC 113 245 CORRECTED AMENDED JUDGMENT FOR PUNITIVE DAMAGES AGAINST DEFENDANT DAN E. BUTCHER AND HIS ALTER EGOS

This action came on regularly for trial on October 17, 1995, in the Los Angeles County Superior Court, Southwest District, Division 4, the Honorable Thomas P. Foye, Judge of the Municipal Court, Retired, presiding by designation. Plaintiffs James A. Hennefer, Reese L. Milner, II and Milner Investment Corporation appeared by their attorneys, Andrew M. White and Melvin N.A.

APPENDIX E

Avanzado of Christensen, White, Miller, Fink, Jacobs, Glaser & Shapiro. Defendants Dan E. Butcher, Mary F. Butcher and Carl W. Robertson, II (erroneously sued and named in this action as Carl W. Robertson, III) appeared by their attorney, Robert Schachter of Hitchcock, Bowman & Schachter. Defendant Herbert C. Schulze appeared by his attorneys, Bartley L. Becker and Molly S. Murphy of Lewis, D'Amato, Brisbois & Bisgaard.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court with its verdict for compensatory damages. After hearing further evidence for purposes of considering an award of punitive damages, the cause was again submitted to the jury with directions to return a verdict on special issues pertaining to punitive damages. The jury deliberated and thereafter returned into court with its verdict consisting of the special issues submitted to the jury pertaining to punitive damages and the answers given thereto by the jury, which said verdict was in words and figures as follows:

Verdict Form No. 8

Do you find by clear and convincing evidence that the defendants committed oppression in the conduct upon which you base your finding of liability of that defendant to plaintiffs?

Defendant Dan E. Butcher **YES**

Do you find by clear and convincing evidence that the defendant committed malice in the conduct upon

which you base your finding of liability of that defendant to plaintiffs?

Defendant Dan E. Butcher **YES**

Verdict Form No. 9

Shall punitive damages be assessed against Defendant Dan E. Butcher **YES**

If your answer is "yes" for any defendant, answer the next question for that defendant only. If your answer is "no" for all defendants, have your foreperson sign and date this special verdict.

We assess punitive damages against the following named defendants as follows.

Defendant Dan E. Butcher **$12,000,000.00**

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

That Plaintiffs James A. Hennefer, Reese L. Milner, II and Milner Investment Corporation, in addition to the separate judgment for compensatory damages, have judgment for punitive damages in the sum of twelve million dollars ($12,000,000.00) against Defendant Dan E. Butcher, and all alter egos of Defendant Dan E. Butcher, which the Court has found includes the following entities which are hereby named as parties to this amended judgment for punitive damages: Spencer Estates; QCC One, A California Limited Partnership; QCC Two, A California Limited Partnership; D & M One Limited Partnership; D & M Seven Limited Partnership; D & M Eight Limited Partnership; D & M

Corporation; Caldan, Inc.; Mardan Enterprises; Mardan Construction; Norco Gardens; Norco Knolls and Starlight Supply Company.

APR 11 1996

Thomas P. Foye

The Honorable Thomas P. Foye
Judge of the Municipal Court (Retired),
sitting by designation

APPENDIX E

APPENDIX F

CONSTITUTIONAL AMENDMENTS AND STATE STATUTORY PROVISIONS

Section 1 of the Fourteenth Amendment to the Constitution of the United States of America provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1 of the Eighth Amendment to the Constitution of the United States of America provides as follows:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

APPENDIX F

Section 187 of the California *Code of Civil Procedure* provides as follows:

"§ 187. Jurisdiction; means to carry into effect; mode of proceeding

When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code. (*Enacted 1872. Amended by Code Am.1880, c. 35, p. 43, § 1.*)"

PROOF OF SERVICE

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, State of California, over the age of 18 and not a party to the within action or proceeding; my business address is 1620 26th Street, Suite 4000 North, Santa Monica, California 90404-4038; that on October 6, 1997, I caused to be served by U.S. Mail on interested parties in said action the within *Appendix to Petition for Writ of Certiorari (Volumes I and II)* by placing true copies thereof enclosed in sealed envelope(s) addressed as follows:

Clerk, United States Supreme Court
1 - First Street, North East
Washington, D.C. 20543
(*Original 40 copies via Express Mail* pursuant to *United States Supreme Court Rules*, rule 29(2))

Clerk, California Supreme Court
Ronald Reagan Building
300 South Spring Street,
Second Floor
Los Angeles, California 90013

Clerk, California Court of Appeal
Second Appellate District, Division One
300 South Spring Street
Second Floor, North Tower
Los Angeles, California 90013-1213

Clerk for the Honorable Thomas Foye, Retired
c/o The Honorable Stephen O'Neil
Los Angeles Superior Court

BEST AVAILA

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Mr. Melvin Avanzado
Mr. David E. Fink
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BLE COPY

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221 North Figueroa Street, Suite, 1200
Los Angeles, California 90012
Attorneys for Defendant and Appellant
Herbert C. Schulze

I declare under penalty of perjury that the above is true and correct. Executed on October 6, 1997 at Santa Monica, California.

Yoginee Patel
(Original Signed)